

After recording, return to:

Federal Way City Attorney's Office
33530 1st Way S.
Federal Way, WA 98003

COPY

**DEVELOPMENT AGREEMENT BETWEEN
CITY OF FEDERAL WAY, WEYERHAEUSER CORPORATION
AND FEDERAL WAY FIRE DISTRICT NO. 39**

This Agreement, made and entered into this 15 day of Dec, 1998, by and between the Weyerhaeuser Corporation, a Washington corporation ("Weyerhaeuser"), and Federal Way Fire District No. 39 ("District"), on the one hand, and the City of Federal Way, Washington, a municipal corporation ("City"), on the other (collectively "the parties").

RECITALS

A. Weyerhaeuser is the owner of certain undeveloped real property ("Weyerhaeuser Property") located within King County but within the Potential Annexation Area of the City of Federal Way. The Weyerhaeuser Property located north of and adjacent to S. 320th Street and is specifically described in Exhibit "A" attached hereto and incorporated herein.

B. The District is the owner of certain real property ("District Property") located in King County and within the Potential Annexation Area of the City of Federal Way. The District Property, currently developed with a fire station, is legally described as the south 250 feet of Tract 7, Midway Suburban Tracts, according to the plat thereof recorded in Volume 38 of Plats, Page 40 in King County, Washington. The District Property is also included within the legal description contained in Exhibit A, attached hereto and incorporated herein.

C. Weyerhaeuser and the District have requested that the City of Federal Way annex the Weyerhaeuser and District Property, and have submitted a petition requesting the same signed by the owners of more than 60% of the assessed value of the two Properties (60% Petition).

D. The City's willingness to accept the 60% Petition, and to submit a Notice of Intention to Annex the Property to the Washington State Boundary Review Board for King County, is conditioned upon limitations on density of development or redevelopment of the Weyerhaeuser and District Property necessary to protect the public health, safety and welfare.

E. The City has authority under RCW 36.70B.170-.210 to enter into a development agreement as part of a proposed annexation, to set development standards to govern development and use of the property to be annexed. The City also has authority under RCW 39.34 to enter into an interlocal agreement with another governmental entity.

NOW, THEREFORE, for and in consideration of the City's acceptance of the 60% petition, the parties agree as follows:

Exhibit A to Ord. #98-3

1. **Development of Weyerhaeuser Property.** Weyerhaeuser covenants and agrees that, regardless of the density or uses available under the zoning designation applicable to Weyerhaeuser Property, Weyerhaeuser will limit any development of the Weyerhaeuser Property to no more than 82 dwelling units, at a density no greater than 6 units per gross acre, calculated prior to deduction of areas required for public street right-of-way. Weyerhaeuser further covenants and agrees that the principal use of any development will be detached single-family dwelling units (either as fee simple or condominiums), and that, if condominiums, the declaration of condominium executed and recorded under RCW 64.34.216(n) will include the requirement that, for a period of one year following the initial sale of each individual dwelling unit, that unit may be occupied only by the unit owner(s) of record and/or their immediate family, if any. In the event that development of up to 82 detached single-family dwelling units is not feasible, by reason of topography or application of Federal Way City Code requirements or other applicable regulations, the principal use of development may be, if allowed by applicable code provisions, up to 106 attached single-family dwelling units, constructed as townhomes and owned as condominiums, at a density no greater than 6 units per gross acre and calculated prior to deduction of areas required for public street right-of-way. For purposes of this agreement, "townhome" means a series of single-family dwelling units constructed in a row no greater than 120 feet in length, where: (a) each unit has its own front entrance to the outside; (b) no unit is located over or under another unit; and (c) each unit is separated from any other adjacent unit by one or more vertical, common, fire-resistant walls. For purposes of this agreement, "condominium" shall have the meaning set forth in RCW 64.34.020(9).

2. **Redevelopment of District Property.** The District covenants and agrees that the principal use of the District Property will be for a fire station. If the District or its heirs, successors or assigns determine to change the principal use of the District Property to a residential use, regardless of the density or uses available under the applicable zoning designation any redevelopment of the District Property will be limited to a density no greater than 6 units per gross acre, calculated prior to deduction of areas required for public street right-of-way. The District further covenants and agrees that the principal use of any development will be either detached single family dwellings or attached single-family condominium townhomes.

3. **BPA Trail Connection.** Weyerhaeuser covenants and agrees that any development of its portion of the Property will not interfere with or prevent an extension of a pedestrian/bike trail over the BPA easements of record over the Weyerhaeuser Property.

4. **Implementation of Agreement.**

4.1. **Timing of Annexation.** Following execution of this Development Agreement, adoption of Comprehensive Plan and zoning designations for the Weyerhaeuser and District Properties, and the City's acceptance of the 60% Petition, the City will submit to the Washington State Boundary Review Board for King County ("BRB") a Notice of Intent to Annex the

Weyerhaeuser and District Properties. If BRB review is not invoked or, in the alternative, if BRB review is invoked but the BRB approves the annexation, the City shall lawfully adopt an ordinance annexing the Weyerhaeuser and District Properties. The City may, in the alternative, upon approval of the 60% Petition, simultaneously adopt an ordinance annexing the Properties effective upon passage of forty-five (45) days or, if BRB jurisdiction is invoked, issuance of a BRB decision approving the annexation.

4.2 Vesting. The City of Federal Way acknowledges that Weyerhaeuser would have the right, prior to the effective date of annexation, to apply to King County for approval of development on the Weyerhaeuser Property. The City of Federal Way and Weyerhaeuser agree that, in lieu of but not in addition to making such application to King County, Weyerhaeuser may apply to Federal Way, which shall process any such application according to the provisions of this Agreement and the Federal Way City Code provisions in effect as of the date Federal Way deems Weyerhaeuser's application complete. Federal Way shall be entitled to recover all costs incurred in such processing. Federal Way's agreement in this Paragraph is subject to the written concurrence of King County. In the event that Weyerhaeuser applies to the City of Federal Way pursuant to this Paragraph, Weyerhaeuser waives and releases and agrees not to assert against the City any and all vested rights it might otherwise have obtained under the King County Code, including zoning and/or development regulations contained therein, had Weyerhaeuser applied to King County prior to the effective date of annexation.

5. General Provisions.

5.1. **Binding on Successors; Covenant to Run With Land.** This Agreement is intended to protect the value of the Weyerhaeuser and District Property, as well as the public health, safety, and welfare of the City of Federal Way, and the benefits and burdens inuring to the Weyerhaeuser and District Property and to the City from this Agreement shall run with the land and shall be binding upon the District and Weyerhaeuser, and their heirs, successors, and assigns, and upon the City of Federal Way.

5.2. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any action to enforce the terms of this Agreement shall be in King County Superior Court.

5.3. **Recording.** This Agreement shall be recorded against the District and Weyerhaeuser Properties.

5.4. **Severability.** The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

5.5 Authority. The City, the District, and Weyerhaeuser each represent and warrant to the others that it has the respective power and authority, and is duly authorized to execute and deliver this Agreement. Weyerhaeuser and the District represent and warrant that they are the fee owners or contract purchasers and have authority to agree to the covenants contained herein.

5.6 Term of Agreement. This Agreement shall remain in full force and effect unless amended or terminated by the mutual agreement of the parties.

5.7 Amendment. This Agreement may be modified only by a written instrument duly executed by all parties; provided, however, notwithstanding any provisions of this Agreement to the contrary, the City of Federal Way may, without the agreement of the District or Weyerhaeuser, adopt and impose upon the District and Weyerhaeuser Properties restrictions and development regulations different than those set forth herein, if required by a serious threat to public health and safety.

5.8 Exhibits A and B attached hereto are incorporated herein by this reference as if fully set forth.

5.9 Headings. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

5.10 Integration. This Agreement and its exhibits represent the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

5.11 Indemnification. Weyerhaeuser and the District release and agree to defend, indemnify, and hold harmless the City and all of its elected and appointed officials, and its employees and agents, from all liability, claims, appeals, and costs, including the costs of defense of any claim or appeal, arising in connection with the annexation of the Weyerhaeuser and District Property and/or this Agreement, except to the extent any liability, claim, appeal or cost results from the sole negligence of the City or its officers, agents, or employees in performance of this Agreement.

5.12 Enforcement. In the event Weyerhaeuser or the District fail to satisfy any of their obligations under this Agreement, the City shall have the right to enforce this Agreement at both law and equity, including but not limited to enforcing this Agreement under the enforcement provisions of the Federal Way City Code in effect at the time of any breach. Damages are not an adequate remedy for breach. In addition, Weyerhaeuser or the District's failure to satisfy any of their obligations in this Agreement shall constitute a breach of contract and shall be grounds for termination of this Agreement by the City.

5.13 **Police Power.** Nothing in this Agreement shall be construed to diminish, restrict or limit the police powers of the City granted by the Washington State Constitution or by general law. This Agreement is an exercise of the City's police powers and the authority granted under RCW 35A.14.330, RCW 36.70B.170-.210, and RCW 39.34.

5.14 **Effective Date.** This Agreement shall be effective on the effective date of the City's Ordinance approving this Agreement, and the execution of this Agreement by duly authorized representatives of each party.

5.15 **Additional Annexation.** If Weyerhaeuser petitions for annexation of that property legally described as Parcel C in Exhibit B hereto and abutting the Weyerhaeuser Property described in Exhibit A, and Parcel C is thereafter annexed by the City, development of Parcel C shall be subject to and governed by the terms of this Agreement, unless the City and Weyerhaeuser amend this Agreement to provide otherwise.

IN WITNESS WHEREOF the parties have hereunto placed their hand and seals on the day and year indicated.

FEDERAL WAY FIRE DISTRICT NO. 39

CITY OF FEDERAL WAY

BY: _____

BY: _____
Kenneth E. Nyberg
City Manager

Date: _____

Date: _____

Approved as to Form
for Federal Way Fire District No. 39

Approved as to Form
for City of Federal Way

Londi K. Lindell

City Attorney, Londi K. Lindell

ATTEST: This ____ day of _____, 1998.

ATTEST: This ____ day of _____, 1998.

Clerk

N. Christine Green, CMC
Federal Way City Clerk